IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 13950 of 2005(I)

PETITIONER:

G.SUBRAMANIA WARRIER,
S/O. S.GOVINDA WARRIER, GOVT.QUARTERS NO.45/553,
MELLARANOOR, KARAMANA P.O.,
THIRUVANANTHAPURAM-2.

BY ADV. SRI.T.RAMPRASAD UNNI

RESPONDENTS:
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1. THE SECRETARY, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. THE DIRECTOR, STATE INSTITUTE
OF EDUCATION, THIRUVANANTHAPURAM.

ADDL.R4: R. RAJAN, DEPUTY DIRECTOR (IED),
DIRECTORATE OF PUBLIC INSTRUCTIONS, JAGATHY, TVM.
(ADDL. R4 IMPLEADED AS PER ORDER IN IA 13299/05 DT.18.10.05)
BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/02/2007, ALONG WITH WPC NO. 28658 OF 2005 THE COURT ON 21.2.2007 DELIVERED THE FOLLOWING:

APPENDIX IN WPC 13950/05

EXT.P1-TRUE COPY OF GO DATED 18.5.1989

EXT.P2-TRUE COPY OF ORDER DATED 19.8.2004 ISSUED BY R2

EXT.P3-TRUE COPY OF THE PROCEEDINGS DATED 26.5.2003 OF R2

EXT.P4-TRUE COPY OF REPRESENTATION DATED 27.1.2005 SUBMITTED BY THE PETITOINER EBFORE THE MINISTER FOR EDUCATION, GOVT. OF KERALA.

EXT.P5-TRUE COPY OF ORDER DATED 27.5.2005

EXT.P6-TRUE COPY OF ORDER DATED 9.5.2005 IN COMPLAINT NO.538/2005 OF KERALA LOK AYUKTA.

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NOs.13950 & 28658 of 2005

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Dated this the 21st day of February, 2007

JUDGMENT

These writ petitions concern the challenge made by the petitioners against the order of appointment of 4th respondent in Writ Petition No.13950/2005 (third respondent in Writ Petition No.28658/2005) to the post of Deputy Director of Integrated Education Scheme. For easy reference, I will refer to the facts of Writ Petition No.13950/2005.

2. The petitioner contends that as per Ext.P1 the mode of appointment of various functionaries including Deputy Director have been prescribed. The qualifications for the said post is mentioned in Ext.P1. The post of Deputy Director fell vacant on 1.3.2005 on the retirement of one K. Saraswathykutty Thampi. Writ Petition No.13950/2005 is at the instance of the petitioner who was holding the post of Co-ordinator at the relevant time. According to the petitioner, the petitioner was entitled to be posted as Deputy Director by promotion. Apprehending that appointment is proposed to be made ignoring the qualifications and the norms in force, the writ petition was filed. By an order dated 30.5.2005, this Court passed the

following interim order:

> " Govt. Pleader seeks for further time. Admit. There will be an interim direction that the post of Deputy Director in the Institute of Education, referred to in the petition is to be filled up, only by candidates who are having prescribed qualification for the post, including Ext.P1."

The petitioner has produced as Ext.P6, an order passed by the Kerala Lok Ayuktha in Complaint No.538/2005 wherein a direction has been issued to the respondents therein to make appointment of a qualified hand to the post of Deputy Director, I.E.D. in terms of the qualification prescribed in GO (MS) No.50/89/G.Edn. dated 18.5.1989. When the additional 4th respondent was appointed, the petitioner has amended the writ petition challenging his appointment on various grounds.

3. Writ Petition No.28658/2005 is also filed by another candidate who claims that going by the qualifications, he was entitled to be appointed. According to him, third respondent has been appointed in violation of the norms and the qualifications prescribed. The substantial challenge in the said writ petition is against Ext.P6 order passed by the Government.

4. On behalf of the first respondent, a counter affidavit has been filed in Writ Petition No.28658/2005 which has been adopted in Writ Petition

No.13950/2005 by a separate memo. In the counter affidavit, the details regarding the selection of the third respondent has been explained. Government appointed a selection committee as per G.O.(Rt) No.3373/05/G.Edn. dated 8.7.2005 consisting of Secretary, General Education (Chairman), Director of Public Instruction (Convener), Shri G. Vijayaraghavan, Member, State Planning Board (Member) and a nominee of Director of Medical Education (Member). Dr. Shaji Prabhakaran was the nominee of the Director of Medical Education when the interview of the candidates was held on 21.7.2005 at 11 a.m. It is averred that for the preparation of the select list, 100 marks were fixed, out of which 50 marks were allotted for academic qualifications and 50 marks for performance in the interview. The selection committee ranked the third respondent in Writ Petition No.28658/2005 who was the Headmaster of Govt. School for the Blind, Olassa, Kottayam as first and the petitioner in Writ Petition No.28658/2005 as third. It is stated that the appointment has been made invoking Rule 9(a)(i) of K.S. & SSR till the qualifications and method of appointment is finalised. It is also stated that the appointment is subject to review after finalising the qualification and method of appointment to the above post.

5. The petitioner's contention that third respondent is not having the

required qualifications, are answered in paragraph 7. Details regarding the qualification and experience of the third respondent are given in the counter affidavit. He has also won State awards and National award and hence the first respondent contends that the third respondent is more qualified and experienced than the other candidates.

6. It may also be mentioned herein that in similar circumstances, Writ Petition No.24523/2005 was filed by one R. Rajendran, Headmaster, Govt. School for the Visually Impaired, Vazhuthakad, Thiruvananthapuram, challenging the appointment of third respondent in Writ Petition No.28658/2005. By judgment dated 18.4.2006, that writ petition was dismissed upholding the selection process and consequent appointment. A reading of the judgment shows that this Court had the advantage of perusing the minutes of the selection committee. After considering the pleadings of the parties and the arguments raised on both sides, the learned Single Judge held in paragraph 5 of the judgment as follows:

> "5. Having considered the rival submissions in the light of the pleadings raised by the parties and also materials placed on record by both sides, I do not find way to grant relief to the writ petitioner. The scope of judicial intervention on selections made by the duly constituted selection committee is very narrow. No

materials have been placed before me to substantiate the petitioner's case that the selection is tainted with material illegalities or irregularities. Malafides in the matter of the selection is not even alleged. Even the personal bias which is attributed to one Shri Shaji Prabhakaran cannot be countenanced in view of the obvious reason that the petitioner has not chosen to implead Shaji Prabhakaran eo-nominee as a party in the case. The judgment of this Court in **Tresa V. Fernandes v. University of Kerala** (1997 (1) KLT SN 47) and those of the Supreme Court in **Dalpat Abasahed Solunke etc. etc.** v. **Dr. B.S. Mahajan etc. etc.** (AIR 1990 SC 434)(see paragraph 9) and **D.V. Bakshi and others etc. etc. v. Union of India and others** (AIR 1993 SC 2347) (see para 6) answers the points which were urged before me seriously by Sri Hamsa. The competency and creditability of at least 3 out of four members who constituted selection committee was not even questioned before me by the petitioner."

7. It is well settled that this Court cannot act as an appellate authority in matters of selection undertaken by a selection committee to any post or evaluate the merits and demerits of each one of the candidates and

enter upon conclusions on that basis. The jurisdiction of this Court under Article 226 of the Constitution of India is limited and is confined only to see whether there are violations of the provisions of the Constitution, statutory rules or other norms governing the method of appointment to the particular post. It is clear from the pleadings that no malafides have been attributed to the selection committee and the constitution of the committee is not under challenge also. Further, the petitioners are persons who have participated in the selection process.

7. Counsel for the petitioner strenuously contended that the selected person (third respondent in Writ Petition NO.28658/2005) lacks qualification and experience specified in the Government Order fixing the method of appointment. It is stated that he is blind, lacks administrative experience and also has none of the "desirable" qualifications. I find no force in the above contentions. As averred in the counter affidavit, third respondent has got M.A. Degree (second class) from the University of Kerala and B.Ed. with first class from the University of Kerala. He is having a Diploma in Teaching for the Visually Handicapped and has various certificates endorsing his participation in different orientation/training courses conducted for the physically disabled persons. He has got teaching experience spanning 15 years, 10 months and 11 days

in a Special School. At the time of his appointment, he was the Headmaster of Govt. School for Blind, Olassa, Kottayam. It is seen that the selection committee has awarded marks for each of the candidates and selected the person who topped as first from among the 16 candidates. As already stated above, there is no challenge against the constitution of the selection committee. It is evident that the selection committee had evaluated the performance of the candidates at the time of interview and has carefully compared the merits of the candidates while awarding the marks. The counter affidavit shows that the Government decided to conduct the interview as all the 16 candidates possess essential qualifications. As far as the allegation of lack of experience of the appointee is concerned, the arguments are only feeble, to be rejected. Going by his experience as a teacher and Headmaster of the school of blind, it cannot be said that he lacks experience to occupy the present post. Further, being a case of evaluation of the various candidates, it cannot be said that the selection committee had considered anything outside the field of choice to favour the third respondent. In the absence of any such materials, it cannot be said that the appointment is vitiated by irregularities alleged by the petitioners. Hence, the allegation of lack of experience on the part of the third respondent in administering schemes/projects, cannot have any merit. The

counsel for the petitioners argued that the appointee is not having the qualifications noted as “desirable” in Ext.P1. The petitioner in Writ Petition No.13950/2005 has got a further case that being blind, the additional 4th respondent will not be able to perform the duties in the post of Deputy Director as it is mainly concerned with administrative duties. The word “desirable” only means 'advisable' as per the Oxford Reference Dictionary. It is seen that the additional 4th respondent is the Headmaster of the School for Blind. The post in question is to implement the scheme, viz. Integrated Education for Disabled. Hence, the third respondent who is having various academic qualifications as detailed in the counter affidavit as well as teaching experience, cannot be said to lack experience for occupying the post in question. Therefore, I am of the view that the said contention has no merit. Since the post in question is one related to implementation of the scheme, viz. Integrated Education for the Disabled, it cannot be said that the third respondent being blind, will be unable to man the post of Deputy Director. Therefore, the said argument has also no merit. Further, he was appointed by order dated 27.7.2005 and the petitioners have no case that he has failed in performing his duties in the post. For all these reasons, I reject the said arguments of the petitioners.

8. Since this Court has already upheld the selection in Writ Petition

No.24523/2005, it is idle to contend that the selection should go on the ground alleged in the above writ petitions. I agree with the conclusions arrived at by the learned Single Judge while dismissing Writ Petition No.24523/2005.

Hence, the above writ petitions are dismissed without any order as to costs.

(T.R. Ramachandran Nair, Judge.)

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